

HOUSE No. 1328

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to prohibit human trafficking in massachusetts..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Purposes

2 The purposes of this Act are to combat trafficking in persons; to protect victims of human
3 trafficking, assist them in the rebuilding of their lives, and to restore them to their inherent
4 dignity; to ensure the just and effective punishment of traffickers; and to create an environment
5 in the State of Massachusetts in which the abolition of human trafficking is effectuated.

6 SECTION 2. Findings

7 The legislature finds that:

8 (1) As a nation, our founding rests on the principle that all persons are created equal and
9 endowed with certain unalienable rights, and that among these are life, liberty and the pursuit of
10 happiness. We are at our best as a people when we are faithful to that principle and struggle to
11 realize its promise for all persons.

12 (2) Throughout history, many regimes of power have used the law to countenance de
13 jure slavery, and have thereby denied the rights and inherent dignity of whole classes of people.

14 (3) Throughout history, persons of power and evil intent have isolated and coerced
15 vulnerable individuals into exploitation, thereby preventing them from knowing or enforcing
16 their rights. Sometimes these perpetrators have operated on the fringes of the law or have
17 benefited from gaps in it, such as the restrictive common-law definition of coercion requiring an
18 imminent threat of physical harm.

19 (4) The Thirteenth Amendment is an act to fulfill our founding principle. It mandates
20 that “Neither slavery nor involuntary servitude . . . shall exist within the United States or any
21 place subject to their jurisdiction,” and it further obligates Congress to enforce that mandate with
22 “appropriate legislation.” This state also has an affirmative obligation to eradicate the badges and
23 incidents of slavery.

24 (5) Trafficking in persons is a modern-day manifestation of slavery. It consists of the
25 exploitation of individuals in situations of commercial sex or forced labor for the purpose of
26 financial gain.

27 (6) The highest order of the state is to fulfill the promise of our founding principle. This
28 fulfillment is achieved by, inter alia, restoring the liberty and inherent dignity of an individual
29 subjected to trafficking in persons.

30 (7) Every year traffickers in persons prey on hundreds of thousands of people around the
31 world. Traffickers operate within or across international and state borders and usually target a
32 society’s most vulnerable, most of whom are women and children. They subject their victims to
33 exploitation through labor trafficking or commercial sex trafficking.

34 (8) In this country and state, both US citizens and non-citizens fall prey to traffickers of
35 persons.

36 (9) Vulnerable people are often trafficked or maintained in trafficking because they do
37 not know their rights or do not know to assert their rights.

38 (10) Traffickers use various techniques to instill fear in victims and keep them enslaved.
39 Some traffickers keep their victims under lock and key. More frequently, traffickers employ less
40 obvious techniques including, inter alia, isolating their victims from family and the public,
41 confiscating passports, visas, driver's licenses, or other identification documents, inflicting
42 physical violence or the threat thereof against victims or their family, threatening to use legal
43 processes against them or reporting them to law enforcement, immigration or juvenile
44 authorities, fostering addiction, controlling their access to addicted substances, and controlling
45 their funds.

46 (11) Many victims fear that their traffickers will exact retribution on their family
47 members, whether residing in this country or abroad.

48 (12) Victims of human trafficking typically endure terrible physical and mental trauma.
49 Victims often suffer from traumatic bonding (Stockholm Syndrome), post traumatic stress
50 disorder (PTSD), and other conditions resulting from the psychological harm inflicted upon
51 them. When rescued, the extent of this trauma must be recognized and assessed; victims need to
52 be provided immediate access to stabilization services before they can effectively contribute to
53 the investigation of the crimes that have been perpetrated against them.

54 (13) Due to the fear instilled in them by the traffickers, and to the experiences in foreign
55 countries from which they came, victims often have a profound suspicion of law enforcement
56 and will not seek the protection of law enforcement officers and agencies.

57 (14) Due to their fears and the psychological harms inflicted upon them, as noted in the
58 US State Department's 2007 Trafficking in Persons Report, trafficking victims are unlikely to
59 self-identify themselves as victims.

60 (15) Within the context of interactions with authorities, victims of human trafficking
61 must primarily be recognized as the victims of a serious crime, and only secondarily as a witness
62 to a crime.

63 As stated in the 2007 Trafficking in Persons Report:

64 A government should provide efficient access to justice for these victims, if they so
65 choose, and access to shelter, medical care, legal aid, and psycho-social counseling.

66 As further stated in the 2007 Report:

67 By placing the needs of victims front and center, victims of this heinous crime are
68 assured of the protection they so desperately need. Once given those assurances, many victims
69 step forward voluntarily and without pressure to become powerful and confident witnesses....

70 (16) Jurisprudence concerning the Thirteenth Amendment of the U.S. Constitution
71 holds that no person can consent to be enslaved, including agreement to debt bondage, nor can a
72 person under the age of 18 consent to participate in commercial sex.

73 (17) The federal Trafficking Victims Protection Act of 2000 is an act that fulfills the
74 promise of the Thirteenth Amendment at the national level. This Act seeks to fulfill that promise
75 within the state of Massachusetts.

76 SECTION 3. Title 2 of the criminal code shall be amended as follows:

77 Section AAA.01 Definitions.

78 In this Article:

79 (1) “Blackmail” is to be given its ordinary meaning and includes but is not limited to a
80 threat to convey or publish any fact or purported fact tending to subject any person to
81 embarrassment, contempt, defamation, hatred, ridicule or worry.

82 (2) “Coercion” means (a) threats of harm to or physical restraint against any person; (b)
83 any act, scheme, plan, or pattern intended to cause a person to believe that performing, or failing
84 to perform, an act would result in serious physical, financial, or emotional harm or distress to or
85 physical restraint against any person; (c) the abuse or threatened abuse of the legal process; (d)
86 knowingly destroying, concealing, removing, confiscating or possessing any actual or purported
87 passport, labor or other immigration document, or other government identification document
88 (including but not limited to drivers licenses and birth certificates), of another person; (e)
89 facilitating or controlling a person’s access to any addictive or controlled substance other than
90 for legal medical purposes; (f) blackmail; (g) demanding or claiming money, goods, or any other
91 thing of value from or on behalf of a prostituted person where such demand or claim arises from
92 or is directly related to the act of prostitution; (h) determining, dictating or setting the price for
93 which another person will engage in an act of prostitution with a third party; (i) determining,
94 dictating or setting the times at which another person will be available to engage in an act of
95 prostitution with a third party; (j) determining, dictating or setting the places at which another
96 person will be available for solicitation of, or to engage in, an act of prostitution with a third
97 party; or (k) determining, dictating or setting the places at which another person will reside for
98 purposes of making such person available to engage in an act of prostitution with a third party.

99 (3) “Commercial sex” means (a) (i) any sex, or other, act intended to appeal to the
100 sexual interests of any person or to arouse sexual excitement or gratification and (ii) with respect
101 to which value is directly or indirectly given, promised to, or received by any person or with
102 respect to which images or sounds are recorded or transmitted for the purposes of directly or
103 indirectly giving, promising, or receiving value, or (b) any sex act intended to further a person’s
104 entry into, or participation in, prostitution or pornography.

105 (4) “Financial harm” includes credit extortion defined elsewhere in commonwealth
106 statute.

107 (5) “Forced labor” shall include debt bondage, involuntary servitude, peonage, and
108 slavery.

109 (6) “Legal process” refers to the criminal law, the civil law, or the regulatory system of
110 the federal government, any state, territory, district, commonwealth, or trust territory therein, and
111 any foreign government or subdivision thereof and include legal civil actions, criminal actions,
112 and regulatory petitions or applications.

113 (7) “Minor” means anyone under the age of 18 (or 21 according to state law).

114 (8) “Debt Bondage” means the status or condition of a debtor arising from a pledge by
115 the debtor of his or her personal services or of those of a person under his or her control as a
116 security for debt, if the value of those services as reasonably assessed is not applied toward the
117 liquidation of the debt or the length and nature of those services are not respectively limited and
118 defined;

119 (9) “Peonage” means holding someone against his or her will to pay off a debt.

120 (10) “Human Smuggling” means the transportation of a person across a border illegally.

121 (11) “Trafficking in Persons” means commercial sex trafficking or labor trafficking.

122 (12) Commercial sex trafficking is defined as the:

123 (a) (i) Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining,
124 by any means, another person (ii) through deception, force, fraud, threat or coercion (iii) for
125 purposes of engaging the person in a commercial sex act; or

126 (b) (i) Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining,
127 by any means, (ii) a person under the age of 18 [or 21, according to the state] (iii) for purposes of
128 engaging the person in a commercial sex act; or

129 (c) Receipt of money, goods, or acceptance of the promise thereof knowing that such
130 money, goods, or promise thereof arose from the trafficking of a person for commercial sex.

131 (13) Labor trafficking is defined as the:

132 (a) (i) Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining,
133 by any means, another person (ii) through deception, force, fraud, threat or coercion (iii) for
134 purposes of engaging the person in forced labor; or

135 (b) Receipt of money, goods, or acceptance of the promise thereof knowing that such
136 money, goods, or promise thereof arose from the trafficking of a person for forced labor.

137 (14) “Victim of Trafficking” is defined as:

138 (a) a person who has been (i) recruited, enticed, harbored, maintained, transported,
139 provided or obtained, by any means, (ii) through deception, force, fraud, threat or coercion (iii)
140 in order to be engaged in a commercial sex act or forced labor; or

141 (b) a person under age 18 who has been recruited, enticed, harbored, maintained,
142 transported, provided or obtained, by any means for purposes of a commercial sex act.

143 SECTION 4. Title 1 of the criminal code shall be amended as follows;

144 Section 265. Crimes against a Person

145 (1) Trafficking for labor or services- Any person who knowingly trafficks a person for
146 labor or services shall be punished pursuant to penalties established by the Attorney General in
147 accordance with the state felony sentencing structure and taking into account the length of the
148 servitude and the overall harm inflicted upon the victim.

149 (A) The defendant shall be subject to enhanced penalties where the victim has been
150 subjected to assault or battery.

151 (B) The defendant shall be subject to enhanced penalties where another person has been
152 subjected to assault or battery where the purpose or effect has been to coerce another into, or
153 maintain a person in, trafficking.

154 (C) The defendant shall be subject to enhanced penalties where the victim has been
155 subjected to rape, sexual assault or sexual abuse.

156 (D) The defendant shall be subject to enhanced penalties where another person has been
157 subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to coerce
158 another into, or maintain a person in, trafficking.

159 (E) The defendant shall be subject to enhanced penalties where death results from a
160 violation of this section or if such violation includes an attempt to kill, kidnapping, or an attempt
161 to kidnap.

162 (F) The court shall order the defendant to pay restitution to any trafficking victim.

163 (G) The court, in imposing sentence on any person convicted of a violation of this
164 chapter, shall order, in addition to any other sentence imposed and irrespective of any other
165 provision of law, that such person shall forfeit to the state --

166 (i) such person's interest in any property, real or personal, that was used or intended to be
167 used to commit or to facilitate the commission of such violation, and

168 (ii) any property, real or personal, constituting or derived from, any proceeds that such
169 person obtained, directly or indirectly, as a result of such violation.

170 (H) The first priority of such forfeited property shall be to pay the restitution to the
171 victims of the defendant and to satisfy civil judgments obtained against the defendant under this
172 Act.

173 (2) Trafficking for commercial sex- Any person who knowingly trafficks a person for
174 commercial sex shall be punished:

175 (A) As determined by the Attorney General, in accordance with the Massachusetts felony
176 sentencing structure, taking into account the length of the servitude and the overall harm inflicted
177 upon the victim.

178 (B) The defendant shall be subject to enhanced penalties where the victim has been
179 subjected to assault or battery.

180 (C) The defendant shall be subject to enhanced penalties where another person has been
181 subjected to assault or battery where the purpose or effect has been to coerce another into, or
182 maintain a person in, trafficking.

183 (D) The defendant shall be subject to enhanced penalties where the victim has been
184 subjected to rape, sexual assault or sexual abuse.

185 (E) The defendant shall be subject to enhanced penalties where another person has been
186 subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to coerce
187 another into, or maintain a person in, trafficking.

188 (F) The defendant shall be subject to enhanced penalties where death results from a
189 violation of this section or if such violation includes an attempt to kill, kidnapping or an attempt
190 to kidnap.

191 (G) The court shall order the defendant to pay restitution to any trafficking victim.

192 (H) The court, in imposing sentence on any person convicted of a violation of this
193 chapter, shall order, in addition to any other sentence imposed and irrespective of any other
194 provision of law, that such person shall forfeit to the state --

195 (i) such person's interest in any property, real or personal, that was used or intended to be
196 used to commit or to facilitate the commission of such violation, and

197 (ii) any property, real or personal, constituting or derived from, any proceeds that such
198 person obtained, directly or indirectly, as a result of such violation.

199 (I) The first priority of such forfeited property shall be to pay the restitution to the
200 victims of the defendant and to satisfy civil judgments obtained against the defendant under this
201 Act.

202 (3) Trafficking of a child for labor or services- Any person who knowingly trafficks a
203 person defined as a child pursuant to Massachusetts statute for labor for services shall be
204 punished as follows:

205 (A) In accordance with state felony sentencing structure, taking into account the length
206 of the servitude and the overall harm inflicted upon the victim.

207 (B) The defendant shall be subject to enhanced penalties where the victim has been
208 subjected to assault or battery.

209 (C) The defendant shall be subject to enhanced penalties where another person has been
210 subjected to assault or battery where the purpose or effect has been to coerce another into, or
211 maintain a person in, trafficking.

212 (D) The defendant shall be subject to enhanced penalties where the victim has been
213 subjected to rape, sexual assault or sexual abuse.

214 (E) The defendant shall be subject to enhanced penalties where another person has been
215 subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to coerce
216 another into, or maintain a person in, trafficking.

217 (F) The defendant shall be subject to enhanced penalties where death results from a
218 violation of this section or if such violation includes an attempt to kill, kidnapping or an attempt
219 to kidnap enhancement in accordance with state sentencing structure.

220 (G) The court shall order the defendant to pay restitution to any trafficking victim and
221 any child as defined by Massachusetts law.

222 (H) The court, in imposing sentence on any person convicted of a violation of this
223 chapter, shall order, in addition to any other sentence imposed and irrespective of any other
224 provision of law, that such person shall forfeit to the state --

225 (i) such person's interest in any property, real or personal, that was used or intended to be
226 used to commit or to facilitate the commission of such violation, and

227 (ii) any property, real or personal, constituting or derived from, any proceeds that such
228 person obtained, directly or indirectly, as a result of such violation.

229 (I) The first priority of such forfeited property shall be to pay the restitution to the
230 victims of the defendant and to satisfy civil judgments obtained against the defendant under this
231 Act.

232 (4) Trafficking of a child for commercial sex – Any person who trafficks a person
233 defined as a child by Massachusetts state law for commercial sex shall be punished as follows:

234 (A) Sentences to be in accordance with state felony sentencing structure and shall also
235 take into account the length of the servitude and the overall harm inflicted upon the victim.

236 (B) The defendant shall be subject to enhanced penalties where the victim has been
237 subjected to assault or battery.

238 (C) The defendant shall be subject to enhanced penalties where another person has been
239 subjected to assault or battery where the purpose or effect has been to coerce another into, or
240 maintain a person in, trafficking.

241 (D) The defendant shall be subject to enhanced penalties where the victim has been
242 subjected to rape, sexual assault or sexual abuse enhancement in accordance with state
243 sentencing structure.

244 (E) The defendant shall be subject to enhanced penalties where another person has been
245 subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to coerce
246 another into, or maintain a person in, trafficking.

247 (F) The defendant shall be subject to enhanced penalties where death results from a
248 violation of this section or if such violation includes an attempt to kill, kidnapping or an attempt
249 to kidnap.

250 (G) The court shall order the defendant to pay restitution to any trafficking victim and
251 any child of the victim who was defined as a child pursuant to Massachusetts state law at any
252 time during the trafficking.

253 (H) The court, in imposing sentence on any person convicted of a violation of this
254 chapter, shall order, in addition to any other sentence imposed and irrespective of any other
255 provision of law, that such person shall forfeit to the state -

256 (i) such person's interest in any property, real or personal, that was used or intended to be
257 used to commit or to facilitate the commission of such violation, and

258 (ii) any property, real or personal, constituting or derived from, any proceeds that such
259 person obtained, directly or indirectly, as a result of such violation.

260 (I) The first priority of such forfeited property shall be to pay the restitution to the
261 victims of the defendant and to satisfy civil judgments obtained against the defendant under this
262 Act.

263 (J) It shall not be a defense that the defendant was unaware of the age of the victim nor
264 shall it be a defense that the victim or anyone acting on the victim's behalf gave consent

265 Section CCC.03. Causes of Action

266 (1) The Attorney General may bring a civil action in the court of general jurisdiction to
267 recover a civil penalty for each violation, and such injunctive and other equitable relief as the
268 court, in its discretion, may order. A criminal case or prosecution is not a necessary precedent to
269 such an action. The first priority of any money or property collected under such an action shall
270 be to pay the restitution to the victims of the defendant and to satisfy civil judgments obtained
271 against the defendant under this Act

272 (2) Any person aggrieved by a violation of this Act may bring a civil action against the
273 person or persons who committed such violation to recover actual and punitive damages and
274 reasonable attorneys' fees. A criminal case or prosecution is not a necessary precedent to such an
275 action. The statute of limitations for such cause of action shall not commence until the latter of
276 the victim's emancipation from the defendant or the victim's twenty-first birthday.

277 Section DDD.04. Affirmative Defenses

278 (1) It shall be an affirmative defense for any victim of trafficking under any prosecution
279 that such person was a victim of trafficking during the time of the alleged offense and that such

280 crime was committed at the direction of the defendant or in furtherance of the trafficking
281 enterprise.

282 SECTION 4. The criminal code and the human services code shall be further amended as
283 necessary to implement the following:

284 Section EEE.05 State Government Response to and Responsibilities for the Abolition of
285 Human Trafficking

286 (1) Within 1 year from the passage of this bill:

287 (A) The state human services department shall establish procedures for identifying
288 victims of trafficking, including a list of all agencies and entities that should be trained on the
289 issue. Such agencies shall include but not be limited to state law enforcement agencies, child
290 protective services, juvenile courts, and runaway and homeless youth shelter administrators.

291 (B) The state human services department shall compile a list of services and programs
292 available to (i) victims of human trafficking with a T visa, federal continued presence status, or a
293 federal Letter of Eligibility and (ii) to putative victims who have not received a designation in
294 subparagraph (i); (iii) to US juvenile citizens or permanent residents who are victims; and (iv)
295 US adult citizens or permanent residents.

296 (C) The human services department shall appoint and train a Trafficking Victims Director
297 to track and coordinate the provision of services to victims and putative victims of human
298 trafficking. The department shall develop procedures for providing assistance to persons who are
299 putative victims, including assistance in obtaining full benefits and services under federal and
300 state law.

301 (D) The state shall establish education programs and “standard operating procedures” for
302 relevant state employees and contractors, including caseworkers, juvenile justice workers,
303 healthcare workers and child protective service workers, for assisting, under federal and state
304 law, and identifying trafficking victims.

305 (E) The state human services department shall establish a program for the
306 comprehensive care and treatment of child victims of commercial sex.

307 (2) With respect to child victims of commercial sex, no such victim shall be charged or
308 prosecuted under state criminal law on account of such acts.

309 (3) The referral of a child to the Trafficking Victims Director shall constitute
310 compliance with the state’s “must report” laws and regulations.

311 (4) State law enforcement agencies and child protective services shall report all putative
312 victims of human trafficking to the Trafficking Victims Director. If a child victim falls under the
313 jurisdiction of child protective services and the Trafficking Victims Director, both offices shall
314 work together to develop a care and treatment plan to attain the best interests of the child.

315 (5) State legal assistance programs for victims of crime shall be available to putative
316 trafficking victims for purposes of obtaining assistance under this statute and for purposes of
317 pursuing civil actions against their defendants.

318 (6) The primary duty of the Trafficking Victims Director is to assist the victim in
319 recovering from the trafficking and in fully enjoying the rights and privileges provided by the
320 federal and state constitutions.

321 (7) Victims’ Rights:

322 (A) Victims of human trafficking shall have the same rights as other victims of a crime,
323 including the right to receive victim compensation.

324 (B) Victims of human trafficking shall also be entitled to basic information, including but
325 not limited to information on their legal rights, human rights, immigration rights, emergency
326 assistance and resources, and any other applicable right and resources.

327 (C) Any statement by a putative victim of human trafficking or the minor child of such
328 victim to a qualified social worker or case-worker, guardian appointed under this title, or
329 advocate is a privileged communication unless waived by the victim's attorney, the adult victim,
330 or the advocate or guardian of a child victim.

331 (D) State employees and contractors shall provide information and statements to a person
332 or such person's attorney, guardian, or legal representative for purposes of such person's
333 application for immigration relief or benefits under the TVPA or other victim assistance law or
334 regulation. Any statement made under this subsection shall be privileged for purposes of any
335 criminal or civil action.

336 (E) The Trafficking Victims Director shall appoint an advocate who is not a state or
337 federal employee for putative child victims of trafficking who shall have the authority to appoint
338 and fire an attorney for the child victim, and to authorize legal process and applications. Such
339 authority shall end when the advocate determines with the agreement of the Director that the
340 child is not a victim of trafficking, the child attains the age of 21, or thirty days after the child
341 receives a T visa, a U visa, a Letter of Eligibility, Continued Presence or Special Immigrant
342 Juvenile Status and is, pursuant to such receipt, placed in a suitable long-term care situation
343 including, but not limited to, the federal URM program.

344 (F) Victims of human trafficking shall not be required to cooperate with law enforcement
345 in the investigation or prosecution of their traffickers as a condition to receiving any social
346 service or benefit, including legal services.